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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 22 1999

In the Matter of	)	
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Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
	)	

REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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July 22, 1999

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SUMMARY

CompTel urges the Commission to mandate line sharing. Line sharing will enable consumers to purchase voice and advanced data services from different service providers using the same local loop. As such, line sharing offers significant potential benefits for U.S. consumers.

At present, consumers who wish to purchase voice and advanced data services from different service providers must purchase two loops. Line sharing will enable these consumers to avoid this needless cost. Since CLECs will no longer be required to purchase an entire loop to provide their high-speed data services, more CLECs will be encouraged to offer DSL services. This is particularly important in rural and other high-cost areas where subscribers are more likely to be sensitive to the cost of adding a second line and the ILECs are reluctant to provide DSL services. The decrease in the cost of providing DSL services and associated increase in competition will promote lower prices and a wider variety of service offerings. CLEC investment in local facilities and networks will be encouraged, as the customer base and revenue stream a CLEC establishes by providing DSL services via line sharing will justify that investment.

Furthermore, line sharing is technically and operationally feasible. Many ILECs are already providing voice and DSL services over the same lines, thus proving that line sharing can be done. The telecommunications industry is already developing the spectrum compatibility

standards and interference guidelines that are necessary to implement line sharing. While the implementation of line sharing may require changes to the ILECs' operational support systems, CompTel agrees with other commenting parties that the basic elements of the requisite systems are already in place.

The Commission has the necessary legal authority to mandate line sharing. The data capabilities of local loops can and will be used to provide interstate services to subscribers, and thus the FCC can use its authority under Sections 201 and 202 to require the ILECs to offer such data capabilities as interstate access services. Since consumers who wish to purchase DSL services from a CLEC are forced to purchase a second line in the absence of line sharing, the failure of an ILEC that has tariffed DSL services to engage in line sharing is an unreasonable practice that discriminates against consumers. Furthermore, the current "price squeeze" imposed by the ILECs – imputing no joint and common loop costs to their own DSL services while charging data CLECs the costs of a full line – discriminates against the CLECs, since it imposes higher costs on a CLEC providing DSL services that the ILEC pays itself.

The Commission can also mandate line sharing as an unbundled network element pursuant to Section 251(c)(3). Line sharing is a "network element" and the failure of the ILECs to provide line sharing "impairs" the ability of competitive carriers to provide high-speed digital data services. However, CompTel recommends that the Commission rely on its authority under Sections 201 and 202 to mandate line sharing, as consumers will realize the benefits of line sharing much more rapidly. If the Commission requires the ILECs to offer the data capabilities of local loops as an interstate access service, the FCC will be able to ensure that the ILECs file the necessary tariffs and appropriate terms and conditions of service at the earliest possible date. Such action will also ensure that line sharing is provided on a uniform and non-discriminatory basis nationwide.

In light of the significant consumer benefits likely to result from line sharing, CompTel recommends that the Commission require the ILECs to offer the data capabilities of their local loops as an interstate access service. In so doing, the Commission should require the ILECs to price these services on a non-discriminatory basis. An efficient rate structure and cost-based rate levels will be critical to the success of line sharing. CLECs should not be deterred from using the data capabilities of local loops by the ILECs' discriminatory rates and practices.

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The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby replies to the comments filed in the above-captioned proceeding.[1] With over 335 members, CompTel is the principal national industry association representing competitive telecommunications carriers. CompTel's member companies include the nation's leading providers of competitive local exchange services and span the full range of entry strategies and options.

As discussed below, CompTel strongly recommends that the Commission adopt the rules and policies necessary to ensure that incumbent local exchange carriers ("ILECs") implement line sharing. Line sharing will facilitate the provision of broadband services to U.S. consumers and thus will serve the public interest. While it has several sources of statutory

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[1] *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, rel. Mar. 31, 1999 ("FNPRM").

authority to require line sharing, the Commission should mandate line sharing by ILECs pursuant to its authority over interstate access services under Sections 201 and 202 of the Communications Act of 1934, as amended ("the Act").

I. THE COMMISSION SHOULD MANDATE LINE SHARING BY ILECS BECAUSE IT WILL PROVIDE SIGNIFICANT BENEFITS FOR U.S. CONSUMERS, AND IT IS TECHNICALLY AND OPERATIONALLY FEASIBLE

A fundamental goal of the Telecommunications Act of 1996 ("1996 Act")[2] was to promote a dynamically competitive telecommunications marketplace so that all U.S. consumers will have ready access to an expanding range of communications services and products from multiple suppliers at competitive rates. Line sharing offers tremendous potential benefits to American consumers, and it is demonstrably both technically and operationally feasible. A Commission mandate regarding the provision of line sharing will enable competitive local exchange carriers ("CLECs") to offer consumers a vastly expanded range of services at far lower costs and with greater ease of access than ever before. Therefore, CompTel recommends that the Commission promptly adopt the rules and policies necessary to implement line sharing.[3]

[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§151 *et seq.*

[3] Unfortunately, the history of the incumbent local exchange carriers' "voluntary" cooperation with the introduction of serious competition into the telecommunications market suggests that nothing less than a Commission mandate will ensure that line sharing for competitive local exchange carriers becomes a reality.

A. Line Sharing Serves the Interests of American Consumers

As the Commission often has noted, a healthy competitive marketplace is characterized by multiple consumer choices.[4] Currently, notwithstanding strong competition in the interexchange marketplace, most consumers have yet to see the benefits of competition in their local exchange service options, including the availability of competitive advanced services. The implementation of line sharing will grant consumers the opportunity to choose different providers of voice and advanced services over the same local loop. By creating that opportunity, the Commission will encourage new entry into the advanced services market, promote the efficient utilization of loop resources, and, ultimately, stimulate additional investment in facilities-based local services by CLECs.[5]

The current environment inhibits entry by CLECs desiring to provide advanced services because they must purchase the entire local loop in order to provide services that use only a portion of its capabilities. Therefore, where the customer depends upon that local loop for its voice services, the CLEC must offer both voice and data services to compete for the customer. A CLEC desiring to provide a more limited range of services must forego those customers, or modify its business plan to include a larger package of offerings. It is patently anti-competitive

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4 *See, e.g.*, Oral Testimony of William E. Kennard, Chairman, Before the Senate Commerce Committee, May 26, 1999, cited in Comments of Covad at 27 n.43; *Separate Statement of Commissioner Susan Ness,* August 6, 1998, *In the Matter of Deployment of Advanced Wireline Services Offering Advanced Telecommunications Capability,* First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 98-147 (March 31, 1999) (FCC No. 99-48) (hereafter *Advanced Services Order and NPRM*), cited in Comments of NorthPoint at 2 n.2.

5 *See, e.g.*, Comments of Covad at 26-28; NorthPoint Communications at 3-5.

to require a CLEC to enter a market it does not wish to enter (*i.e.*, the voice market) in order to enter the market that it does wish to enter (*i.e.*, the advanced services market).

In the current environment, the only feasible way for a CLEC to provide advanced services broadly without also offering voice communications is for the customer to install a second line at its premises. In many cases, this is a needless expenditure of funds, and an unnecessary inconvenience for the customer, because the customer's primary line is fully capable of supporting both its voice and data requirements. It is inefficient to use two lines to provide voice and data services where a single line will do.

Further, the competitive harm inflicted upon CLECs has been magnified by the ILECs' decision to price their own digital subscriber line ("DSL") services based solely on directly attributable costs, while allocating 100% of their joint and common loop costs to their monopoly voice service offerings. This has resulted in ILECs offering DSL services at retail rates which are less than what it costs a competing CLEC just to purchase the underlying loop, to say nothing of the CLEC's directly attributable costs of providing a competitive DSL service.[6] Competition has been, and will continue to be, inhibited in this critical growth sector if CLECs must purchase an entire local loop simply to use a portion of the loop's capabilities to provide advanced services.

Further, mandatory line sharing will promote the Commission's oft-voiced goal of promoting the offering of advanced services to all U.S. consumers, including residential and rural

6 Comments of Network Access Solutions at 3-5; Comments of MCI at 11-12; Comments of NorthPoint at 3,7; Comments of Intermedia at 2.

customers.[7] Today, residential and rural consumers are often confronted with the ILECs' monopoly service offerings or deprived of advanced services entirely. Because residential and rural subscribers may be more likely than other subscribers to desire both voice and data services to be provided over a single line,[8] it is no overstatement to say that a Commission mandate for line sharing, properly implemented, will change radically the communications realities of all U.S. consumers, not just high-volume subscribers in urban areas.

Importantly, all consumers will benefit from line sharing through lower rates for DSL and other advanced services. If CLECs can obtain only the loop capabilities they need to provide service, and if they pay a non-discriminatory cost-based rate for those capabilities, their underlying costs will decline significantly and they will be able to compete more effectively against the ILECs' DSL offerings on price as well as quality and service. The growth of competition between ILECs and an expanding community of CLECs will precipitate a marked downward trend in prices for advanced services, thereby increasing the number of households and businesses who can afford advanced services.

A mandate for line sharing also will stimulate service and technological development, as well as infrastructure investment, in the provision of advanced services. Once

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7 Remarks of *FCC Chairman William E. Kennard, Association of Local Telecommunications Services (ALTS) Convention Nashville, TN, May 3, 1999* "A Competitive Call to Arms" cited in Comments of NorthPoint at 2 n.4; *Separate Statement of Commissioner Tristani,* March 18, 1999, in *Advanced Services Order and NPRM,* cited in NorthPoint at 2 n.3; Comments of ALTS at 6-8; Comments of NorthPoint at 4, 6-7; Comments of Network Access Solutions at 3; Comments of RhythmnsNet Connections at 3-4, 7.

8 Residential and rural subscribers are more likely to be sensitive to the costs of adding a second line just to receive data services, and they may be more likely to live in premises where adding a second line requires the installation of new plant in the ground, which would add significant costs to any services offered by CLECs over second lines.

CLECs are able to provide advanced services over the same lines used by the ILECs to provide voice services, and to purchase the underlying loop capabilities at non-discriminatory, cost-based rates, CLECs will be able to devote more resources to developing their product lines as well as advanced services technology. Further, contrary to the ILECs' tired argument that promoting competitive entry will inhibit facilities investment, line sharing ultimately will result in a more robust investment by CLECs in local facilities and networks. CLECs will use line sharing to develop a customer base and a solid revenue stream, which they can later use to justify offering a broader array of services over their own facilities where it is economically feasible to do so. Further, because only CLECs with collocation arrangements likely will be in a position to take advantage of line sharing, the adoption of federal rules mandating line sharing will stimulate rather than depress the willingness of CLECs to invest in collocation arrangements and other facilities necessary for broad-based local competition. Without line sharing, market growth and new entry are inhibited, and investment in local facilities for the provision of advanced services will increase significantly.[9]

With the predictable exception of the ILECs themselves, the large majority of commenting parties agree that federal rules mandating line sharing will bring significant benefits to American consumers, in the form of expanded offerings, new technologies, higher standards

9 As only providers with the appropriately collocated equipment can take advantage of line sharing, its availability will serve to stimulate rather than disincentivize investment in additional facilities.

of performance for providers, and more competitive prices. The Commission should move forward expeditiously in this proceeding to adopt such rules.

B. Line Sharing is Technically and Operationally Feasible

Along with most of the commenting parties, CompTel endorses the Commission's tentative conclusion that line sharing is technically feasible. The basis for this conclusion begins with practical realities – the ILECs have successfully introduced line sharing already. In particular, many ILECs are providing voice and advanced services over the same lines, thereby proving that line sharing can be done.[10] Additionally, ILECs are reselling their DSL services to CLECs, in some cases specifically described as an overlay of voice services in the same loop.[11] As a result, there is already a modicum of line sharing between ILECs and CLECs over the same lines when CLECs operate on a resale basis. Finally, there are several commercial arrangements in place both between ILECs and CLECs, as well as between CLECs, involving the sharing of lines for the provision of different services.[12]

On a theoretical plane, there was virtually no dispute among the commenters regarding whether line sharing could work – the focus was on which technologies were compatible, how to split frequencies, which loops could support shared services, and who should control the transmissions. CompTel joins the consensus that line sharing is technically feasible,

10 *See, e.g.*, Comments of RhythmnsNet Connections at 8; Comments of Covad at 4.

11 *See, e.g.*, Comments of Covad at 28-29.

12 Comments of RhythmnsNet Connections at 8-9; Comments of ALTS at 6 n.17.

and believes that practical and implementation issues can be resolved effectively by the Commission in this proceeding.

Several commenters have pointed out that DSL technologies are generally compatible with voice services on the same line. As Covad noted, ADSL was specifically designed not to interfere with voice transmission.[13] The Association for Local Telecommunications Services ("ALTS") pointed out that ADSL line sharing is included already in the Committee T1 standard.[14] ALTS further noted that the compatibility issues ostensibly raised by line sharing are fundamentally similar to those raised by any deployment of DSL services.[15]

CompTel recognizes that the implementation of line sharing will require establishment of adequate spectrum compatibility standards and guidelines with respect to the interference capabilities of specific technologies. However, that necessary task should not preclude or even delay the adoption of federal rules mandating line sharing. The telecommunications industry is already at work addressing those issues and promulgating applicable standards, and, with the assistance and guidance of the Commission, it will continue to move towards the prompt resolution of outstanding issues. CompTel believes that federal line-sharing rules will speed up this process and force the ILECs to be constructive participants rather than destructive combatants.

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13 Comments of Covad at 14.

14 Comments of ALTS at 8 n.17.

15 *Id.*

With respect to operational feasibility, CompTel agrees with most commenting parties that operational issues are not insurmountable obstacles. As commenters generally recognized, line sharing is no different than other market-opening measures, such as unbundled network elements ("UNEs"), in that they cannot be fully or effectively implemented without modifications to the ILECs' operational systems.[16] With respect to their own voice and data services offered to subscribers on a shared-line basis, the ILECs have already adapted their operational support systems.[17] Whether the incoming data signal, once split off, is directed towards ILEC equipment or towards collocated CLEC equipment does not raise materially different operational issues. Indeed, as Network Access Solutions pointed out, ILECs providing tariffed DSL services to CLECs for resale to end-user subscribers already are resolving any operational issues raised when line-sharing signals belong to different customers.[18]

CompTel realizes that the implementation of line sharing may place new demands upon the ILECs' operational systems. At the same time, CompTel believes, as do many others, that the basic elements of the requisite systems are in place already. With a cooperative effort among ILECs, CLECs, the Commission, and the state commissions, the system modifications needed to bring effective line sharing to fruition can be achieved efficiently without undue disruption to the ongoing provision of customer services.

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16 Comments of Network Access Solutions at 7-8; Comments of RhythmnsNet Communications at 11; Comments of Covad at 12.

17 Comments of Covad at 7-14; Comments of Network Access Solutions at 7; Comments of NorthPoint Communications at 18, 21-23.

18 Comments of Network Access Solutions at 7.

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C. The FCC Should Require Pricing for Line Sharing to be Nondiscriminatory

CompTel believes that an efficient rate structure, and cost-based rate levels, for the data capabilities of a local loop will be critical to the success of line sharing. As such, the FCC should ensure that the ILECs price the data capabilities of their shared loops on a non-discriminatory basis. The current "price squeeze" imposed by the ILECs – imputing no joint and common loop costs to their own DSL services while charging data CLECs the costs for a full line – is fundamentally anti-competitive and must be eliminated immediately. The suggestion of BellSouth and others that this pricing issue would go away if only CLECs would agree to provide voice services misses the point.[19] It is precisely because competition and consumer interests are promoted by enabling CLECs to enter the market to provide solely advanced services that federal line-sharing rules must be adopted. It would defeat the public interest underlying those rules to permit ILECs to deter CLECs from using the data capabilities of local loops through discriminatory rates and practices.

II. THE FCC HAS THE NECESSARY LEGAL AUTHORITY TO MANDATE LINE SHARING

A. The FCC Should Order the ILECs to Provide Line Sharing as an Interstate Access Service

The Commission has the authority under the Act to require the ILECs to share their local loops. As several commenters correctly concluded, the Commission can use its authority under Sections 201 and 202 of the Act to require ILECs to offer the data capabilities of

[19] Comments of BellSouth Corporation at 24-27; Comments of Bell Atlantic at 5.

local loops as an interstate access service.[20] There is no dispute that those capabilities can be used, and probably will be used overwhelmingly, to provide interstate services to subscribers. The Commission has already reached a similar conclusion with respect to GTE's FCC-tariffed DSL service in the *GTE DSL Order*.[21] As such, the Commission should require the ILECs to implement line sharing by tariffing and providing the data capabilities of the local loop to CLECs pursuant to just, reasonable and non-discriminatory rates, terms and conditions.

For ILECs that already have filed federal tariffs for their DSL services, their failure to offer the underlying data capabilities through line sharing is clearly unjust, unreasonable, and discriminatory in violation of Sections 201 and 202 of the Act. In the absence of line sharing, consumers who wish to purchase their DSL services from a CLEC rather than an ILEC are effectively forced to install a second line. As noted above, the difference in cost to consumers between a CLEC's DSL services provided over a second loop and an ILEC's DSL services provided over a "self-shared" loop is magnified by the ILECs' allocation of no joint and common loop costs to their DSL services. Further, there are no insuperable technical or operational impediments to line sharing. Under these circumstances, the failure of an ILEC that has tariffed DSL services to engage in line sharing is an unreasonable practice that discriminates against consumers who desire to obtain DSL services from a carrier other than an ILEC. Such

20 Comments of ALTS at 14; Comments of Network Access Solutions at 11; Comments of Covad at 14.

21 *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148,* CC Docket No. 98-79, Memorandum Opinion and Order, FCC 98-292, rel. Oct. 30, 1998 ("*GTE DSL Order*") (DSL services are interstate access services when used for Internet access). CompTel has no objection to the ILECs tariffing the data capability created by line sharing on the state level as well (where the data channels created by line sharing are used for intrastate services), or placing restrictions in their federal tariffs to ensure that the data channels created for interstate access services are actually used in interstate service.

practice also discriminates against CLECs, since it imposes higher costs on a CLEC providing DSL service than the ILEC itself must pay to provide the same service.

While Section 251 of the Act provides another basis of authority by which the FCC can mandate line sharing (as discussed below), CompTel believes that reliance on the Commission's authority under Sections 201 and 202 should be the preferred approach for mandating line sharing. Consumers will realize the benefits of line sharing much more rapidly if the Commission requires the ILECs to offer the data capabilities of loops as a tariffed interstate service. There would be only one agency (not 50 agencies) to monitor and evaluate the appropriateness of proposed terms, conditions, and rates for service, and the FCC could ensure that the ILECs file the necessary tariffs at the earliest possible date. Furthermore, mandating line sharing as an interstate access service will ensure that line sharing is provided on a uniform and non-discriminatory basis nationwide. National rules will be particularly effective given the operational and administrative issues that must be resolved before line sharing becomes a reality. By contrast, while CompTel agrees that the Commission has statutory authority to mandate line sharing under Section 251(c)(3) of the 1996 Act, that approach could result in considerable delays in the provision of competitive DSL services via shared lines, as well as inconsistent and disparate terms and conditions of service, since UNE terms and rates are established on a state-by-state basis. Accordingly, the Commission should order the ILECs to tariff and provide line sharing as an interstate service.[22]

[22] Although the Commission has authority to require ILECs to offer the data capabilities of local loops as an interstate access service, this does not mean that such offerings would constitute "exchange access" within the meaning of 47 U.S.C. § 153(16). The (continued...)

B. In the Alternative, the FCC Can Mandate Line Sharing as an Unbundled Network Element

CompTel agrees with the many commenters who argue that the Commission has the authority to order line sharing as a UNE pursuant to Section 251(c)(3).[23] Line sharing is a "network element" as defined in Section 3(29) of the Act, since a loop is "a facility or equipment used in the provision of a telecommunications service" and the use of the upper frequencies on the loop is a discrete "function or capability" of the loop.[24] Therefore, the data capabilities of a local loop qualify as a UNE, and the Commission should use its authority over UNEs to mandate line sharing should the Commission decide not to do so pursuant to the provisions of Sections 201 and 202.[25]

Furthermore, the failure of the ILECs to provide line sharing clearly "impairs" the ability of competitive carriers to provide high-speed digital data services.[26] CompTel has previously argued in its comments filed in the *UNE Remand Proceeding* that a carrier requesting a particular UNE should be considered "impaired" by a denial of access if use of an externally supplied element, as compared to use of the ILEC's element, results in a material difference in either cost of service, time to provision service, or the number or scope of customers to whom

(...continued)
Commission's authority over interstate services under Sections 201 and 202 is broader than the statutory category of "exchange access" services.

23 *See, e.g.*, Comments of Covad at 18; Comments of Network Access Solutions at 8; Comments of ALTS at 11; Comments of NorthPoint at 25.

24 47 U.S.C. § 153(29).

25 *See* 47 U.S.C. §§ 251(d)(1); 251(d)(2); 201(b).

26 No analysis is required under the "necessary" standard in Section 251(d)(2) as this standard applies only in those limited circumstances when an element is "proprietary in nature." There is no basis for suggesting that line sharing is "proprietary" and the ILECs raise no arguments to this effect in their comments.

the service would be provided.[27] Under this standard, competitive carriers are "impaired" by the lack of access to shared ILEC lines, because shared CLEC lines are not available at a cost, in a timeframe, or on a geographic scope anywhere comparable to shared ILEC lines. Assuming for the sake of argument that the relevant "externally supplied element" in this context is the full ILEC loop, then competitive carriers plainly are "impaired" by their inability to purchase the data capabilities of a local loop at non-discriminatory, cost-based rates. That impairment is only amplified by the ILECs' decision to price their own DSL services without any allocation of joint and common loop costs, while forcing CLECs to pay the full cost of the line to provide the same service to subscribers. This cost-price squeeze is vividly illustrated by Table 1 in Covad's comments, which compares Bell Atlantic's monthly charges for ADSL services and UNE conditioned loops, and shows that in many locations Bell Atlantic's charges for UNE conditioned loops approach or exceed Bell Atlantic's charges for ADSL services. It is clear from this comparison, as Covad concludes, that maintaining a price competitive with ILEC DSL services requires CLECs to lose money, since the CLECs' direct costs (loop, DSLAM, collocation, transport, etc.) will exceed the market price.[28]

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[27] Comments of CompTel filed May 26, 1999 in response to *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Further Notice of Proposed Rulemaking (1999) ("*UNE Remand Proceeding*"), at 2.

[28] Comments of Covad at 20-21. The ILECs argue that the CLECs cannot be considered "impaired" in their provision of high-speed digital data services because the CLECs lead the ILECs in the development and deployment of broadband services. Comments of GTE at 20; Comments of U S West at 20; Comments of Ameritech at 3. The simple answer is that the impairment standard does not look at 'who leads whom' in the deployment of services; rather, it asks whether competitive carriers are impaired in their provision of service to customers. Clearly the answer to this question is yes.

III. CONCLUSION

For the reasons stated herein, the Commission should mandate line sharing as an interstate access service.

Respectfully submitted,

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July 22, 1999